**IN THE UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF ARKANSAS**
**CENTRAL DIVISION**

**LITTLE ROCK FAMILY PLANNING SERVICES, *et al.*, PLAINTIFFS,**

**v. Case No. 4:19-cv-00449-KGB**

**LESLIE RUTLEDGE, in her official capacity as Attorney General of the State of Arkansas, *et al.*, DEFENDANTS.**

**DEFENDANTS' RESPONSE IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION AND MOTION TO FILE A SUPPLEMENTAL COMPLAINT**

## INTRODUCTION

This country faces an unprecedented crisis. Unlike anything in the last century, the COVID-19 pandemic has swept across the nation. It has sickened hundreds of thousands and killed tens of thousands. To reduce burdens on overwhelmed healthcare facilities and thereby to save lives the pandemic has required everyone to make sacrifices—including temporary restrictions on constitutional rights.

But Plaintiffs argue that abortion providers are immune from any, even temporary restrictions on their work. Indeed, they say, abortion is simply too sacred to restrict—even if it ends up costing the lives of innocent Arkansans. And this Court's temporary retraining order agreed, elevating abortion above all other rights.

This Court should not need the Eighth Circuit to tell it that this isn't so. Instead, under the proper legal framework, Arkansas's emergency measures directed at curbing the spread of COVID-19 are constitutional. Plaintiffs are unlikely to succeed on the merits of their constitutional claims, and their motion for preliminary injunction should be denied.

Further, Plaintiffs' supplemental complaint should be dismissed because it does not relate to the existing complaint.

## BACKGROUND

A. The COVID-19 public-health emergency is an unprecedented threat to Arkansans.

The COVID-19 pandemic is unlike anything the world has seen in the past century. It has infected over two million people.[1] It has claimed over 100,000 lives, and for most of the world, the worst is yet to come.

Arkansas is no different. There are over 2,200 confirmed cases in the State.[2] But Arkansas has worked hard to slow the pandemic. It currently has one of the lowest hospitalization rates in the country, and Arkansas is hopeful that it will have sufficient medical equipment to weather the crisis.[3] Indeed, Dr. Anthony Fauci, the director of the National Institute of Allergy and Infectious Diseases and a leader of the federal government's pandemic response, recently praised Arkansas as a "model state."[4]

But past success must not engender complacency. Arkansas hospitalizations are projected to peak in just eleven days.[5] And personal protective equipment (PPE) is a concern, with shortages across the country. Smith Decl. (Ex. A), at 2-3. Indeed, because COVID-19 carriers are frequently asymptomatic, healthcare workers need to use more PPE than usual, even when not treating COVID-19 patients. *See id.* at 2. With infections poised to peak, it is vital that state officials be free to guide Arkansans through this crisis.

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[1] Coronavirus COVID-19 Global Cases by the Center for Systems Science and Engineering at Johns Hopkins University (JHU), https://coronavirus.jhu.edu/map.html.

[2] https://www.youtube.com/watch?v=82Oh_wIRxhY.

[3] https://www.youtube.com/watch?v=82Oh_wIRxhY.

[4] https://www.swtimes.com/news/20200411/fauci-approves-hutchinsons-plan.

[5] https://covid19.healthdata.org/united-states-of-america/arkansas.

B. Arkansas has taken dramatic efforts to combat COVID-19.

Arkansas officials have issued a number of emergency directives to curb COVID-19's spread and flatten the curve. Smith Decl. at 1-2. On March 11, 2020, Governor Asa Hutchinson issued executive order EO 20-03, declaring a state of emergency.[6] Arkansas has closed K-12 schools for the remainder of the school year, required most state employees to telework, required healthcare facilities to screen staff and visitors, closed bars and restaurant dine-in service, and closed other indoor venues. Smith Decl. at 1-2.

EO 20-03 empowered ADH to issue emergency orders to "do everything possible to respond to and recover from the COVID-19 virus."[7] ADH has noted the critical nationwide PPE shortage and the need for gloves, gowns, face and eye protections, N95 masks, and surgical masks. Smith Decl. at 2. To maximize PPE availability during Arkansas's peak, ADH is taking steps to preserve PPE, including issuing guidance prioritizing its allocation. *Id.* at 2-3. The goal is to make sure the frontline healthcare professionals have access to PPE.

Like other surgical procedures, surgical abortions require PPE to protect staff "from exposure to blood and other bodily fluids and tissue, and to protect the patient from infection." Aultman Decl. (Ex. B) at 4. Necessary PPE could include a surgical mask, eye protection, a gown, and gloves. *Id.* at 3. Complications can increase the need for PPE. *Id.* at 3-4. And with the COVID-19 threat looming, patients require PPE as well. *Id.* at 3.

[6] https://governor.arkansas.gov/images/uploads/executiveOrders/EO_20-03.__1.pdf

[7] *Id.*

On April 3, following CDC guidance, ADH issued a directive on elective surgeries, mandating that all non-medically necessary surgeries be postponed during the COVID-19 emergency.[8] That directive conserves PPE and reduces social contact. *See* Smith Decl. at 2-3. It applies to all surgeries, requiring postponement of any surgery that is not immediately medically necessary. *Id.* at 3.

Unless extended, both that directive and the governor's executive order are not effective beyond May 10. Indeed, while Plaintiffs are correct that neither document contains an expiration date that is because *Arkansas law already* limits the duration of states of emergency and provides an expiration date: "No state of disaster emergency may continue for longer than sixty (60) days unless renewed by the Governor." Ark. Code Ann. 12-75-107. Thus, ADH's emergency powers, including its authority to issue and enforce the directive, are limited to the state of emergency and—absent extension—the provisions challenged in this case are limited to a defined period.

On April 7, inspectors conducted an unannounced inspection of Little Rock Family Planning Services (LRFP) that revealed that facility was continuing to perform surgical abortions that were not medically necessary. *Id.* at 3-4. On April 10, ADH notified LRFP that it was violating ADH's directive and ordered it to stop performing noncompliant surgeries. *Id.* at 4.

[8] https://www.healthy.arkansas.gov/images/uploads/pdf/Elective_Procedure_Directive_April_3.pdf

C. LRFP repurposes an unrelated lawsuit to challenge ADH's nonessential surgery directive.

LRFP and other plaintiffs originally filed this lawsuit last summer, challenging three separate abortion-related laws. The Court preliminarily enjoined all three statutes, and an interlocutory appeal is pending. *See LRFP v. Rutledge*, No. 19-2690. That appeal also challenges LRFP's procedural wrangling to avoid random assignment.

To again avoid random assignment, LRFP did not file a new lawsuit to pursue the claims at issue here. Instead, on April 13, LRFP and one of its practitioners (collectively, "LRFP") sought leave to file a supplemental complaint challenging ADH's generally applicable elective-surgery directive. That directive has nothing to do with the three statutes challenged last year.

In their supplemental complaint, LRFP challenges the emergency measures as they apply to surgical abortions, contending they violate the substantive-due-process rights of some number of women who are not parties to this lawsuit. Hours after filing the motion seeking to file a supplemental complaint, LRFP sought an ex parte TRO on its substantive-due-process claims. It claimed that the directive's requirement to postpone all non-medically necessary surgeries banned previability abortion.

D. The Court's ex parte TRO.

On April 14, the Court granted LRFP's motion for an ex parte TRO.[9] It enjoined the application of Arkansas's emergency measures as applied to surgical abortion providers, barring

[9] On Easter Sunday evening, LRFP sent Defendants' counsel an email asserting that it would seek an ex parte TRO—in an *unknown court*, against *unknown parties*, and on an *unknown basis*—if LRFP was not immediately exempted from ADH's directive. After LRFP filed its motion, the Court issued the requested TRO without allowing a response.

ADH from requiring surgical abortions be postponed—like every other surgical procedure—unless necessary to preserve life or health. Thus, unlike all other healthcare providers, surgical abortion providers are exempt from the State's efforts to beat COVID-19.

Defendants have sought emergency mandamus relief from the United States Court of Appeals for the Eighth Circuit. *In re Leslie Rutledge, et al*, No. 20-1791 (8th Cir. Apr. 15, 2020). The Eighth Circuit's decision remains pending.

Over Arkansas's objections that the officials responsible for combating the virus be allowed to focus on their critical work, this Court has ordered that they should be required to appear and give live testimony little more than a week before the pandemic reaches its peak in Arkansas. *See* DE 152.

**ARGUMENT**

The Supreme Court and the Eight Circuit have made clear that injunctive relief is an extraordinary and drastic remedy and should not be granted unless Plaintiffs have clearly carried their burden of persuasion. *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) ("It frequently is observed that a preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion.") (quoting 11A C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure § 2948, 129–130 (2d ed. 1995)); *Sanborn Mfg. Co., Inc. v. Campbell/Hausfield Scott Fetzer Co.*, 997 F.2d 484, 485-96 (8th Cir. 1983) (noting the burden on the movant "is a heavy one") (citing *Dakota Indus., Inc. v. Ever Best Ltd.*, 944 F.2d 438, 440 (8th Cir. 1991)).

In resolving preliminary injunction motions, courts consider: "(1) the threat of irreparable harm to the movant; (2) the state of balance between this harm and the injury that granting the injunction will inflict on the other litigant; (3) the probability that the movant will succeed on the

merits; and (4) the public interest." *Dataphase Sys., Inc. v. CL Sys., Inc.*, 640 F.2d 109, 114 (8th Cir. 1981) (en banc). Plaintiffs fall woefully short of making the strong showing required for a preliminary injunction.

## I. Plaintiffs are unlikely to succeed on the merits.

The only circuit to have considered the merits of the claims Plaintiffs bring described what Plaintiffs ask this Court to do (for a second time) as "a clear abuse of discretion that produced a patently erroneous result: bestowing on abortion providers a blanket exemption from a generally-applicable emergency public health measure." *In re Abbott*, — F.3d —, 2020 WL 1685929, at *15 (5th Cir. Apr. 7, 2020) (*Abbott I*). "Not stopping there, the district court usurped the power of state authorities by passing judgment on the wisdom and efficacy of those emergency measures." *Id.* This Court should deny the preliminary injunction.

### A. Precedent dating back a century permits a State to exercise its police power in an emergency to protect public health.

A State's response to a public-health emergency, and the curtailing of constitutional rights such a response must often entail, is reviewed under a different framework than constitutional challenges in ordinary times. As the only circuit to have addressed this issue recently held, that framework was "established over 100 years ago in *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11 (1905)." *Abbott I*, 2020 WL 1685929, at *5. Under that framework, a constitutional challenge to a public-health measure can succeed only if the measure "has no real or substantial relation" to public health and safety, or "is beyond all question a plain, palpable invasion of rights secured by the fundamental law." 197 U.S. at 31. And the Supreme Court made clear that federal courts, in reviewing these challenges, may not "usurp the functions of another branch of government," *id.* at 28, by "second-guess[ing] the state's policy choice in crafting emergency public health measures." *Abbott I*, 2020 WL 1685929, at *6.

*Jacobson* involved a Massachusetts law providing for mandatory vaccination to fight a smallpox epidemic. That law was challenged as violating the Fourteenth Amendment right for a person "to care for his own body and health in such a way as to him seems best." 197 U.S. at 26. The Supreme Court upheld the statute, holding that the "liberty secured by the Constitution . . . does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint." *Id*. That is so because "a community has the right to protect itself against an epidemic of disease which threatens the safety of its members." *Id*. at 27. The Court explained that, for this reason, "the rights of the individual in respect of his liberty may at times, under the pressure of great dangers, be subjected to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand." *Id*. at 29.

*Jacobson* was no anomaly. The Supreme Court has repeatedly recognized that individual rights must sometimes give way to the public need in times of emergency. *See, e.g.*, *Lawton v. Steele*, 152 U.S. 133, 136 (1894) (holding that "the state may interfere wherever the public interests demand it" and "discretion is necessarily vested in the legislature to determine, not only what the interests of the public require, but what measures are necessary for the protection of such interests"); *Compagnie Francaise de Navigation a Vapeur v. La. State Bd. of Health*, 186 U.S. 380, 393 (1902) (upholding Louisiana's right to quarantine passengers aboard vessel); *Prince v. Massachusetts*, 321 U.S. 158, 166-67 (1944) ("the right to practice religion freely does not include liberty to expose the community . . . to communicable disease"); *United States v. Caltex*, 344 U.S. 149, 154 (1952) ("in times of imminent peril—such as when fire threatened a whole community—the sovereign could, with immunity, destroy the property of a few that the property of many and the lives of many more could be saved").

*Jacobson* established a lenient two-part test for courts reviewing constitutional challenges to state action during a public-health crisis. Under that standard, government action is susceptible to challenge only if it, "purporting to have been enacted to protect the public health . . . or the public safety, [1] has no real or substantial relation to those objects, or [2] is beyond all question, a plain, palpable invasion of rights secured by the fundamental law." *Jacobson*, 197 U.S. at 31.

While *Jacobson* recognized that judicial intervention might be warranted in "[e]xtreme cases," it "disclaimed any judicial power to second-guess the state's policy choice in crafting emergency public health measures." *Abbott I*, 2020 WL 1685929, at *6. To do so would be to "usurp the functions of another branch of government." *Jacobson*, 197 U.S. at 28; *see also id.* at 30 ("It is no part of the function of a court . . . to determine which one of two modes was likely to be the most effective for the protection of the public against disease. That was for the legislative department to determine . . . .").

The Fifth Circuit summed up the governing law as follows:

> [W]hen faced with a society-threatening epidemic, a state may implement emergency measures that curtail constitutional rights so long as the measures have at least some real or substantial relation to the public health crisis and are not beyond all question, a plain, palpable invasion of rights secured by the fundamental law. Courts may ask whether the state's emergency measures lack basic exceptions for extreme cases, and whether the measures are pretextual—that is, arbitrary or oppressive. At the same time, however, courts may not second-guess the wisdom or efficacy of the measures.

*Abbott I*, 2020 WL 1685929, at *7.

In reviewing a challenge involving the right to abortion under the *Jacobson* framework, the Fifth Circuit noted that *Casey*'s undue-burden standard—the governing standard in abortion cases generally—must be incorporated under the second prong. In other words, courts must ask whether the State's public-health response "imposes burdens on abortion that 'beyond all question' exceed its benefits in combating the epidemic." *Id.* at *11 (quoting *Jacobson*, 197 U.S. at

31). To put it in terms of the controlling Eighth Circuit standard governing facial challenges to abortion restrictions, the issue is whether the "benefits are" beyond all doubt "substantially outweighed by the burdens it imposes on a large fraction of women." *Jegley*, 864 F.3d at 960 n.9.

B. Contrary to this Court's view in its TRO, abortion is not a super-right immune from restriction in any situation, even a public health crisis.

Committing what the Fifth Circuit described as an "extraordinary" error, *Abbott I*, 2020 WL 1685929, at *2, this Court's TRO order cast aside the governing framework of *Jacobson* and *Casey* and instead held that the right to abortion is special, and may never be restricted—not even by a generally-applicable public-health directive necessary to combat a pandemic, TRO at 11. The Court was mistaken and it should not repeat that error.

Plaintiffs argue there is an absolute right to previability abortion, and any law that operates as a ban on previability abortion is facially invalid. That claim conflicts with *Casey*'s decision to uphold a Pennsylvania parental-consent requirement that *entirely barred* minors who could not obtain a bypass from obtaining an abortion, underscoring that there is no absolute right to pre-viability abortion. *See Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 899 (1992); *see also Cincinnati Women's Servs., Inc. v. Taft*, 468 F.3d 361, 374 (6th Cir. 2006) ("The *Casey* Court itself was not persuaded to invalidate Pennsylvania's parental-consent requirement by record evidence showing that the requirement would altogether prevent some women from obtaining an abortion."). Thus, the claim that the right recognized in *Casey* is unlimited fails.

The Fifth Circuit considered and rejected that claim, holding that "nothing in the Supreme Court's abortion cases suggests that abortion rights are somehow exempt from the *Jacobson* framework." *Abbott I*, 2020 WL 1685929, at *7. To the contrary, the Supreme Court has cited *Jacobson* in three of its abortion cases. In *Roe v. Wade*, the Court cited *Jacobson* as an example of the Supreme Court's refusal to recognize "an unlimited right to do with one's body as

one pleases." 410 U.S. 113, 154 (1973). It also held that the right to abortion "is not unqualified and must be considered against important state interests in regulation." *Id.* *Casey* also cites *Jacobson* as an example of the balance between "personal autonomy and bodily integrity" and "governmental power to mandate medical treatment or to bar its rejection" 505 U.S. at 857. And in *Gonzales v. Carhart*, the Supreme Court cited *Jacobson* as an example of where it had "given state and federal legislatures wide discretion to pass legislation in areas where there is medical and scientific uncertainty." 550 U.S. 124, 163 (2007).

As the Fifth Circuit put it, "*Jacobson* instructs that *all* constitutional rights may be reasonably restricted to combat a public health emergency." *Abbott I*, 2020 WL 1685929, at *8. Indeed, applying that rule, that court issued a writ of mandamus to a district court that did exactly what Plaintiffs seek here because the lower court "clearly and indisputably erred" by "bluntly declar[ing]" Texas's executive order to be "an outright ban on pre-viability abortions" and enjoining it, instead of applying the *Jacobson* framework. *Id.* at *8 (internal quotations omitted); *cf.* TRO at 11 (describing the emergency measures as "a ban on virtually all pre-viability abortions after 10 weeks LMP").

This Court is required to place the undue-burden test in its proper place within the *Jacobson* framework and determine whether the emergency measures' benefits "beyond all question," *Jacobson*, 197 U.S. at 31, are "substantially outweighed . . . the burdens [they] impose[] on a large fraction of women," *Jegley*, 864 F.3d at 960 n.9.

C. Properly analyzed under the *Jacobson* framework, Arkansas's emergency measures are constitutional.

Applying the proper framework, it is clear that Plaintiffs are not entitled to injunctive relief.

1. Arkansas's emergency measures have a real and substantial relation to the COVID-19 pandemic.

The first part of the *Jacobson* inquiry is whether the emergency measures have "a real or substantial relation" to the goal of combating the COVID-19 pandemic. 197 U.S. at 31. In analyzing Texas's similar executive order postponing both medication and surgical abortions, the Fifth Circuit concluded it was "obvious[ly] . . . a valid emergency response to the COVID-19 pandemic." *Abbott I*, 2020 WL 1685929, at *8. Indeed, LRFP itself does not claim that Arkansas's emergency measures as a general matter lack a "real or substantial relation" to its purposes of conserving PPE and reducing social contact. At best, LRFP claims in a footnote that the generally applicable strictures of ADH's directive, as applied to surgical abortions in particular, lack such a relation. *See* DE 135 at 32 n.127. But as this Court previously recognized, Arkansas has a "legitimate interests in protecting or promoting the public's health and safety during the COVID-19 pandemic." TRO at 14.

Thus, it is undisputed that ADH's directive is a valid public-health measure aimed at curtailing COVID-19. It requires that non-medically necessary surgeries be postponed until the end of the COVID-19 emergency. It is generally applicable to all types of surgeries, and it does not single out abortion for any unfavorable treatment. Any surgery—whether abortion or oral surgery—is not required to be postponed if it meets the requirements for being immediately medically necessary. This mandate is in line with the CDC's recommendation that nonessential surgeries be postponed. Smith Decl. at 3.

The thrust of LRFP's supplemental complaint is that the Constitution requires States to create special exemptions for surgical abortions from generally applicable public-health measures. But nothing in the *Jacobson* framework requires that public-health officials take a piecemeal approach in dealing with a crisis. Providing exceptions to every provider that wants

them would no doubt swallow the rule. LRFP's arguments that they should be able to perform surgical abortions, unlike other surgeries, amount to no more than policy disagreements. But neither Plaintiffs nor "courts" are entitled to "second-guess the wisdom or efficacy of the measures" Arkansas has taken to combat the spread of COVID-19. *Abbott I*, 2020 WL 1685929, at *7.

2. Arkansas's emergency measures are not "beyond all question" a ban on previability abortion.

The second part of the *Jacobson* inquiry is whether the emergency measures are "beyond all question, a plain, palpable invasion of rights secured by the fundamental law." *Jacobson*, 197 U.S. at 31. In analyzing Texas's similar executive order postponing both medication and surgical abortions, the Fifth Circuit rejected the argument that the order operated as an outright abortion ban, and instead held that it "merely postpones certain nonessential abortions, an emergency measure that does not plainly violate *Casey* in the context of an escalating public health crisis." *Abbott I*, 2020 WL 1685929, at *9. The same is true here.

As this Court outlined in its TRO, Plaintiffs argue that Arkansas's emergency measures "prohibit virtually all pre-viability abortions after 10 weeks LMP and prohibit virtually all pre-viability abortions for patients for whom medication abortion is contraindicated." TRO at 11. That conclusion "is plainly wrong." *Abbott I*, 2020 WL 1685929, at *9. The emergency measures do not ban abortions. Instead, they "only delay[] certain non-essential abortions." *Id.* Like Texas's order, they will expire. As explained above, unless extended by the Governor, the emergency proclamation, along with all ADH directives issued pursuant to its emergency powers, cannot extend beyond May 10, 2020. "The expiration date makes [the emergency measures] a delay, not a ban, and also shows [it] is reasonably tailored to the present crisis." *Id.* at *10. "'The Supreme Court has repeatedly upheld a wide variety of abortion regulations that entail

some delay in the abortion but that serve permissible Government purposes,' even those—such as parental consent laws—that 'in practice can occasion real-world delays of several weeks.'" *Id.* (quoting *Garza v. Hargan*, 874 F.3d 735, 755 (D.C. Cir. 2017) (en banc) (Kavanaugh, J., dissenting)). And postponement of abortions is only relevant in the constitutional sense where it "lead[s] to an increased risk of complications." *Jegley*, 864 F.3d at 957.

Also, like the Texas order, Arkansas's emergency measures have exceptions "for the mother's life and health, based on the determination of the administering physician." *Abbott I*, 2020 WL 1685929, at *9. Likewise, "[t]here are no statutory requirements confining the physician's judgment, and the physician need not report his determination to the state." *Id.* It thus satisfies *Jacobson*'s requirement to attempt to account for "extreme cases." *Jacobson*, 197 U.S. at 38.

"Properly understood," the emergency measures amount to "a temporary postponement of all non-essential medical procedures, including abortion, subject to facially broad exceptions." *Abbott I*, 2020 WL 1685929, at *10. The Fifth Circuit correctly held that this "does not constitute anything like an 'outright ban' on pre-viability abortion," and thus "cannot be affirmed to be, *beyond question*, in palpable conflict with the Constitution." *Id.* (quoting *Jacobson*, 197 U.S. at 31). The same is true here.

3. The emergency measures are not "beyond all question" an undue burden under *Casey*.

Plaintiffs cannot show that Arkansas's emergency measures are "beyond all question" an undue burden, certainly not as a facial matter.

Under *Casey*, a law imposes an "undue burden" when it places "a substantial obstacle in the path of a woman seeking an abortion." 505 U.S. at 878 (plurality). *Casey* made clear that "[n]ot all burdens on the right to decide whether to terminate a pregnancy will be undue." *Id.* at

876. Even if state regulation "increas[es] the cost or decreas[es] the availability of medical care," or makes it "more difficult or more expensive to procure an abortion," that "cannot be enough to invalidate it" if the law serves a "valid purpose[]" that doesn't "strike at the right itself." *Id.* at 874.

And only if a law amounts to a substantial obstacle does a court move on to the balancing test, where it must "consider the burdens a law imposes on abortion access together with the benefits those laws confer." *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292, 2309 (2016). For a burden to be facially undue, the benefits must be "substantially outweighed by the burdens it imposes on a large fraction of women." *Jegley*, 864 F.3d at 960 n.9. To top it off, in the context of the *Jacobson* framework, Plaintiffs must establish this "beyond all question."

Requiring the postponement of surgical abortions for a matter of weeks is not a prohibition on previability abortion. And because every type of surgery is subject to the same requirement, the emergency measures are certainly not "designed to strike at the right itself." *Casey*, 505 U.S. at 874. Indeed, the burdens on women delaying an abortion are the same as the burdens on every Arkansan who must postpone elective surgery during this pandemic. In emergencies everyone must sacrifice for the common good. And it is State officials—not LRFP and its practitioners, nor the federal courts—who should determine the most fair distribution of the required sacrifices.

Plaintiffs do not grapple with the rigorous analysis demanded by *Jegley*. The Eighth Circuit previously vacated a preliminary injunction from this Court in that case because it lacked any estimate as to how many women would suffer the burdens this Court maintained existed, instead referring only to "some women." 864 F.3d at 960. Here, Plaintiffs have put forth no evidence that *any* woman will suffer harm constituting a substantial obstacle under *Casey*, and they

certainly cannot show that "practically all" women will. *Cincinnati Women's Servs., Inc. v. Taft*, 468 F.3d 361, 370 (6th Cir. 2006), *cited with approval*, *Jegley*, 864 F.3d at 960.

Plaintiffs' benefits analysis fares no better and amounts to little more than second-guessing state officials' COVID-19 response. *See Abbott I*, 2020 WL 1685929, at *6 (disclaiming any "judicial power to second-guess the state's policy choice in crafting emergency public health measures."). Most egregiously, Plaintiffs suggest that Arkansas *should favor abortions over childbirth* as a means of PPE preservation. That is not a federal court's decision to make. Nor is Arkansas required to accept LRFP's procedures for managing its response to the pandemic, instead of holding all providers across the State to the same standard. *See* TRO at 14-15; *see also Jegley*, 864 F.3d at 960 n.9 (making clear that State need not defer to abortion facilities' protocols). "[I]f the choice is between two reasonable responses to a public crisis, the judgment must be left to the governing state authorities." *Abbott I*, 2020 WL 1685929, at *12.

D. Plaintiffs' equal-protection claim is unlikely to succeed.

Plaintiffs' equal-protection claim is even less likely to succeed. To start, Plaintiffs fail to even cite the governing framework for an equal protection challenge. "The Supreme Court recognizes such a 'class of one' equal protection claim—meaning 'the plaintiff did not allege membership in a class or group'—'where the plaintiff alleges that [it] has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment.'" *Robbins v. Becker*, 794 F.3d 988, 995 (8th Cir. 2015) (quoting *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000)). Plaintiffs have put forth no evidence showing that they have been singled out from similarly situated providers.

And even if Plaintiffs could show some difference in treatment, they cannot challenge ADH's decisions enforcing compliance with the emergency measures in an equal protection claim.

The "class-of-one theory . . . [has important] limits." *Robbins*, 794 F.3d at 995. It does not apply to "forms of state action . . . which by their nature involve discretionary decision-making based on a vast array of subjective, individualized assessments." *Engquist v. Or. Dep't of Agri.*, 553 U.S. 591, 603 (2008). In these situations, "treating like individuals differently is an accepted consequence of the discretion granted" to government officials. *Id.* Allowing a challenge in this context based on "the arbitrary singling out of a particular person would undermine the very discretion that such state officials are entrusted to exercise." *Id.*

Courts have identified numerous categories of government action that, under *Engquist*, cannot be attacked in a class-of-one claim. "For example, an equal protection claim does not arise in the public employment context" or "where a traffic officer gives only one person a ticket on a busy highway . . . ." *Novotny v. Tripp County, S.D.*, 664 F.3d 1174, 1179 (8th Cir. 2011); *see also Caesars Mass. Mgmt. Co. v. Crosby*, 778 F.3d 327, 336–37 (1st Cir. 2015) (applying *Engquist* to preclude four corporate plaintiffs from asserting an equal protection claim arising out of a decision by the Massachusetts Gaming Commission finding them unsuitable as proposed operators of a casino); *Flowers v. City of Minneapolis*, 558 F.3d 794, 799–800 (8th Cir. 2009) ("In light of *Engquist*, . . . we conclude that while a police officer's investigative decisions remain subject to traditional class-based equal protection analysis, they may not be attacked in a class-of-one equal protection claim.").

Enforcement decisions, especially those in responding to a worldwide pandemic, "by their nature involve discretionary decision-making based on a vast array of subjective, individualized assessments." *Engquist*, 553 U.S. at 603. ADH has broad discretion under federal and state law in making decisions regarding healthcare facilities and providers, and numerous factors that must be taken into account in exercising that discretion. Allowing class-of-one claims in this context

"would undermine the very discretion that [ADH is] entrusted to exercise." *Id.* Because *Engquist* bars a class-of-one theory in this context, Plaintiffs are unlikely to succeed on the merits of their equal protection claim.

Plaintiffs have put forth no evidence that that (1) they were singled out for disparate treatment and that (2) there no rational basis for the classification. *See Robbins*, 794 F.3d at 995, even if Plaintiffs could come within striking distance of a class-of-one claim under normal circumstances, they could not meet the heightened standard applicable under the *Jacobson* framework, that there is beyond all question no rational basis any classification. 197 U.S. at 31. And any attempt by the Court to delve into Arkansas officials' policy choices in managing the State's response to COVID-19, such as decisions on which businesses and locations may remain open, is merely prohibited "second-guess[ing] the state's policy choice in crafting emergency public health measures." *Abbott I*, 2020 WL 1685929, at *6. Plaintiffs' equal-protection claim cannot possibly succeed.

**II. The other factors weigh against a preliminary injunction.**

Arkansas has a significant interest in preserving the health, welfare, and safety of its citizens, and its emergency measures are designed to do just that. The harm caused by continuing to allow non-medically necessary surgical abortions to go forward—potentially using up PPE and hospital beds while further spreading the disease—cannot be remedied. And "the inability to enforce its duly enacted plans clearly inflicts irreparable harm on the State." *Abbott v. Perez*, 138 S. Ct. 2305, 2324 n.17 (2018). Any harm to LRFP is more than outweighed by the needs of the State in responding to this crisis. *See Veasey v. Abbott*, 870 F.3d 387, 391 (5th Cir. 2017) (per curiam); *Nken v. Holder*, 556 U.S. 418, 435 2009 (when the government is a party, the "harm to

the opposing party and the public interest" equitable factors "merge"). Arkansas must be allowed to take measures necessary to protect its citizens.

**III. This Court should deny the motion to file a supplemental complaint.**

This Court should not grant Plaintiffs leave to file the supplemental complaint. Although Rule 15(d) allows a supplemental complaint to "cover matters subsequently occurring" to the original, the subsequently occurring matters must "pertain to the original cause." *United States v. Vorachek*, 563 F.2d 884, 886 (8th Cir. 1977) (quoting *Berssenbrugge v. Luce Mfg. Co.*, 30 F. Supp. 101, 101 (W.D. Mo. 1939)). The allegations in LRFP's supplemental complaint, which strictly involve Arkansas's COVID-19 response, do not have any relation to the original complaint challenging three abortion regulations that took effect nearly a year before anyone had heard of COVID-19. Because the supplemental complaint thus does not "pertain to the original cause," this Court should not grant Plaintiffs' motion to file it.

**A.** First off, this Court lacks jurisdiction to grant Plaintiffs leave to file the supplemental complaint. Last summer, when Plaintiffs initially filed this lawsuit, this Court granted their motion to consolidate it with *Planned Parenthood of Arkansas & Eastern Oklahoma v. Jegley*, No. 4:15-CV-00784-KGB (E.D. Ark.). And when Defendants asked this Court to reconsider the order granting that motion, it denied reconsideration. *See* Order, DE 29 at 1. Defendants included both the initial order and the refusal to reconsider it in their currently pending appeal of the district court's preliminary injunction that predates, and is unrelated to, the COVID-19 pandemic. Notice of Appeal, DE 120 at 1; *see* Statement of Issues on Appeal 1, *LRFP v. Rutledge*, No. 19-2690 (8th Cir. August 21, 2019), Entry ID#4821909.

The issues raised in Plaintiffs' motion to file a supplemental complaint are the same issues currently on appeal of those prior two orders. As they argued in support of those two prior

orders, Plaintiffs now argue that simply because they again challenge an Arkansas abortion regulation, their supplemental complaint is related to all their previous challenges to other regulations. *See* DE 133 at 7-8.

Because these issues are currently subject to appeal, this court lacks jurisdiction to act on the motion for leave to file a supplemental complaint, which requires relitigation of the same issues raised in the appeal of the prior orders on nonrandom assignment. Any other conclusion would allow Plaintiffs to dodge the jurisdictional bar on litigating issues currently pending on appeal. *See Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982) (per curiam) ("The filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal."). Defendants' "notice of appeal transfer[red] adjudicatory authority" over the issue of nonrandom assignment of any claims in this case "from the district court to the court of appeals." *Manrique v. United States*, 137 S. Ct. 1266, 1271 (2017). As a result, this Court lacks jurisdiction to act on Plaintiffs' motion for leave to file a supplemental complaint and should deny it.

**B.** Secondly, this Court should also deny that motion because it is improper under Rule 15(d) of the Federal Rules of Civil Procedure. The Eighth Circuit has said that the allegations in a supplemental pleading must "pertain[] to the original cause." *Vorachek*, 563 F.2d at 886 (quoting *Berssenbrugge*, 30 F. Supp. at 101). Hence, a supplemental complaint "cannot be used to introduce a separate, distinct and new cause of action." *Planned Parenthood of S. Ariz. v. Neely*, 130 F.3d 400, 402 (9th Cir. 1997) (quotation marks omitted); *see Keith v. Volpe*, 858 F.2d 467, 474 (9th Cir. 1988) (noting that "some relationship must exist between the newly alleged matters

and the subject of the original action"); *Lewis v. Knutson*, 699 F.2d 230, 239 (5th Cir. 1983) (prohibiting supplemental pleadings that are "not germane to the original cause of action").

The supplemental complaint introduces a new cause of action that bears *no relationship whatsoever* to the original complaint. The original complaint related to three specific Arkansas laws and whether those laws imposed an undue burden under normal conditions. Plaintiffs have admitted as much. *See* DE 133 at 2. But the supplemental complaint relates only to Arkansas's emergency COVID-19 response. *See* DE 142 ¶¶ 38-55. The supplemental complaint alleges nothing in relation to the three laws challenged in the original complaint.

Plaintiffs nevertheless claim that the two complaints overlap at a general level. They say that both the supplemental complaint and the original complaint allege violations—albeit completely unrelated violations—of "women's constitutional right to abortion." DE 133 at 5. By this reasoning, every future Arkansas abortion claim should be filed as a supplemental complaint in this lawsuit. The Ninth Circuit has held that even much more factually similar complaints than these were not related enough to justify filing the later one as a supplemental complaint to the earlier. *See Neely*, 130 F.3d at 402-03 (district court abused its discretion in allowing supplemental complaint, even though "both the original suit and the supplemental complaint sought to challenge Arizona's parental consent law"). This Court should follow the Ninth Circuit's lead and refuse to allow Plaintiffs to file their supplemental complaint.

## CONCLUSION

The Court should deny the preliminary injunction and leave to file the supplemental complaint.

Respectfully submitted,

LESLIE RUTLEDGE
Arkansas Attorney General

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Arkansas Solicitor General

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# Exhibit A

**To Defendants' Response in Opposition to Motion for Preliminary Injunction and Motion to File a Supplemental Complaint**

*Little Rock Family Planning Servs. v. Rutledge*, E.D. Ark. No. 4:19-cv-00449-KGB

**DECLARATION OF SECRETARY NATHANIEL SMITH, MD, MPH**

Pursuant to 28 U.S.C. 1746, I declare:

1. My name is Nathaniel Smith. I am over 18 years of age, competent to testify in this case, and I have personal knowledge of the facts contained in this Declaration.

2. I am a physician board-certified in Internal Medicine and Infectious Diseases. I currently hold voluntary faculty positions in the Division of Infectious Diseases at the University of Arkansas for Medical Sciences College of Medicine and in the Epidemiology Department at the College of Public Health. My clinical interests include HIV, tropical medicine, and emerging infectious diseases.

3. I am the Secretary of the Arkansas Department of Health ("ADH") and have served as Director and State Health Officer for ADH since 2013. In my capacity as Secretary, I serve as a member of the Governor's cabinet and provide scientific and executive leadership to ADH. I previously served as Branch Chief for Infectious Diseases, State Epidemiologist, and Deputy Director for Public Health Programs.

4. Like the rest of the country, Arkansas is currently battling the COVID-19 pandemic and working to curb the spread of the disease. On March 11, 2020, Governor Asa Hutchinson declared a state of emergency pursuant to Arkansas law. EO 20-03 provides that the "Secretary of Health, in consultation with the Governor, shall have sole authority over all instances of quarantine, isolation, and restrictions on commerce and travel throughout the state." *Id.* at 1. It further provides that ADH "shall act as the lead agency" in facing this emergency and shall "do everything reasonably possible to respond to and recover from the COVID-19 virus." *Id.*

5. The State has issued a number of emergency orders and directives to curb the spread of COVID-19, including: closing K-12 schools for the remainder of the current school

year, requiring most state employees to conduct business through telecommuting, requiring healthcare facilities to screen staff and visitors for fever and symptoms of the virus, closing bars and restaurant dine-in service, and closing other indoor venues to non-essential functions.

6. As of April 14, 2020, Arkansas has had a total of 1,498 cases of COVID-19, including 32 deaths. While these numbers are smaller than many other states, they are increasing daily. State officials are working tirelessly to keep the public informed and to take any necessary steps to curb the spread of the virus and save as many lives as possible.

7. A large number of COVID-19 cases require hospitalization. Due to the measures taken by the State and federal governments, as well as the cooperation of Arkansans in social-distancing efforts, Arkansas currently has the lowest COVID-19 hospitalization rate among southeastern states.[1] However, according to current predictive models, Arkansas will not reach peak hospital resource utilization until approximately May 2, 2020.[2]

8. One of the dangers of the rapid spread of COVID-19 is a critical shortage in personal protective equipment ("PPE") needed to treat patients and protect healthcare professionals. The needed PPE includes gloves, gowns, face and eye protections, N95 masks, and surgical masks. PPE is absolutely essential for all healthcare workers because one can be a carrier of COVID-19, transmitting the disease to others, and yet be asymptomatic. Without the required PPE, healthcare workers with COVID-19 may infect others before showing any symptoms of the disease.

9. There is currently a nationwide shortage of the PPE necessary to respond to the COVID-19 emergency, and Arkansas is no exception. ADH expects the PPE shortage to

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[1] *See* LIVE: Governor Hutchinson Provides COVID-19 Update (04.09.20), https://www.youtube.com/watch?v=Kg-qMqmycAM.

[2] https://covid19.healthdata.org/united-states-of-america/arkansas (last accessed April 14, 2020)

continue and has therefore taken steps to preserve the PPE needed to respond to the COVID-19 emergency. ADH has issued guidance for prioritizing the allocation of PPE to hospitals and long-term care facilities that are treating COVID-19 patients, as well as emergency medical services that are transporting COVID-19 patients.[3] The State is working constantly to secure additional sources of PPE.

10. On April 3, 2020, ADH issued a Directive on Elective Surgeries ("Directive"), mandating that all non-medically necessary surgeries be postponed during the COVID-19 emergency. This is in line with the Center for Disease Control's guidance for preserving PPE during the COVID-19 emergency.[4]

11. Postponing surgeries that are not immediately medically necessary serves two important objectives. First, it reduces person-to-person contact and helps mitigate the spread of COVID-19. Second, it frees up PPE that would be expended on those surgeries to be utilized by healthcare facilities who are treating COVID-19 patients. This is in line with ADH's prioritization of PPE allocation. *See supra* n.3.

12. The Directive was issued pursuant to the emergency powers vested in the Secretary of Health by the Governor's emergency proclamation. The Directive does not single out abortion providers or surgical abortions. It applies equally to all procedures that do not meet the listed criteria in order to be deemed immediately medically necessary.

13. On April 7, 2020, ADH Health Facilities Services personnel conducted an unannounced inspection of Little Rock Family Planning Services ("LRFP"). Doc. 134-1 at 2;

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[3] Arkansas Department of Health (ADH) Guidelines for Prioritization of Allocation of Personal Protective Equipment, https://www.healthy.arkansas.gov/images/uploads/pdf/03.22.2020_ADH_PPE_prioritization_(003).pdf.

[4] *See, e.g., Interim Guidance for Healthcare Facilities: Preparing for Community Transmission of COVID-19 in the United States*, Center for Disease Control, https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-hcf.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fhealthcare-facilities%2Fguidance-hcf.html.

*see* Ark. Admin. Code 007.05.2-4(J) ("Any authorized representative [ADH] shall have the right to enter upon or into the premises of any Abortion Facility at any time in order to make whatever inspection it deems necessary in order to assure minimum standards and regulations are met."). During this inspection, ADH personnel became aware that LRFP was providing non-medically necessary surgical abortions, instead of postponing them as required by the Directive. *Id.*

14. On April 10, 2020, ADH sent a letter notifying LRFP that it was in violation of the Directive. *Id.* The letter ordered LRFP to immediately cease and desist performing non-medically necessary surgical abortions. *Id.* The letter noted that LRFP could still perform surgical abortions "where immediately necessary to protect the life or health of the patient." *Id.* The letter notified LRFP that further violations of the Directive would result in an immediate suspension of their license. *See* Ark. Code Ann. 20-9-302(b)(3)(B) (providing ADH authority to immediately suspend an abortion facility's license).

15. The peak of COVID-19 infection in Arkansas is coming in approximately two weeks. It is critical that healthcare facilities and professionals cooperate with the State's efforts to curb the spread of the virus and conserve the necessary PPE needed to respond to this emergency. The PPE which would be expended in performing non-medically necessary surgeries—including abortions—must be preserved for the State's COVID-19 response efforts.

16. The Directive's mandate to postpone non-medically necessary surgeries is temporary in nature. When the COVID-19 emergency has ended and ADH has withdrawn the Directive, these surgeries may resume. Until then, the patients seeking these surgeries, as well as the providers and facilities wishing to perform them, must do what the rest of the state is doing: make the sacrifices necessary to save lives. I have no doubt that the Directive will save lives, so long as healthcare facilities, including LRFP, abide by it.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 15, 2020.

Nathaniel Smith, MD, MPH

# Exhibit B

**To Defendants' Response in Opposition to Motion for Preliminary Injunction and Motion to File a Supplemental Complaint**

*Little Rock Family Planning Servs. v. Rutledge*, E.D. Ark. No. 4:19-cv-00449-KGB

**DECLARATION OF KATHI AULTMAN, M.D.**

Pursuant to 28 U.S.C. § 1746, I, Kathi Aultman, M.D., declare:

1. I have personal knowledge of the statements contained in this declaration.

2. I am a board-certified OB/GYN and a Fellow of the American College of Obstetricians and Gynecologists. I earned my medical degree at the University of Florida College of Medicine in 1977 and completed my OB/GYN Residency at the University of Florida affiliated, Jacksonville Health Education Program in 1981. I retired in 2014 for medical reasons after almost 33 years in private practice in Orange Park, FL.

3. I have been an advocate for women and their health issues for my entire career. I was the co-founder and co-director of the first Rape Treatment Center in Jacksonville, Florida and performed sexual assault exams on women and children as a medical examiner for Duval and Clay Counties. I also served as the Medical Director for Planned Parenthood of Northeast Florida, Inc. from 1981 to 1983. I served on the Ethics Commission of the Christian Medical and Dental Associations from June 2000 to June 2002 and on the Board of Community Health Outreach, which provides free health care and food to the poor, from 2016-2018.

4. I am currently an Associate Scholar with the Charlotte Lozier Institute, and a member of the American Association of Prolife Obstetricians and Gynecologists (AAPLOG), the Christian Medical and Dental Associations, the Clay County Medical Society, and the Florida Medical Association.

5. I have testified before several state legislatures, state courts, and before Congress on the Partial Birth Abortion Ban and other issues from 1997-2002 and was a consultant for the U.S. Justice Department on the Partial Birth Abortion Ban from 2003-2004.

6. I have testified before legislative bodies extensively at the state and federal level on a variety of pro-life issues from 2016 to the present.

7. I submitted a declaration in Arkansas in July of 2019 in the case of LITTLE ROCK FAMILY PLANNING SERVICES v. LESLIE RUTLEDGE and have submitted declarations and affidavits in other states on prolife issues.

8. I have performed 1st trimester suction D&C abortions and 2nd trimester D&E abortions. I have treated women with the medical, surgical and psychological complications of abortion and pregnancy. I have performed C-sections, vaginal deliveries, and gynecological surgeries including robotic hysterectomy and laparoscopy.

9. In 2019 I reviewed and coded 199 Adverse Event Reports from Mifepristone Regimens for Abortion for AAPLOG and entered the data into a spreadsheet to be used for research purposes.

10. I have been continually reviewing the medical literature on abortion, especially since 2016 when I began testifying again.

11. My qualifications are stated in the attached curriculum vitae. The opinions I express in this declaration are based on my education, training, and experience, in addition to my ongoing familiarity with the medical literature.

12. According to the Arkansas Department of Health, 3,069 abortion procedures were reported in the state of Arkansas in 2018. Roughly two-thirds of the abortions in 2018 were performed by surgical means, including vacuum aspiration (55 percent) and dilatation and evacuation (13 percent). Another 32 percent of abortions were performed by medication, or drug-induced, methods.[i]

13. Both vacuum aspiration abortions, sometimes referred to as “D&C with suction abortions”, and D&E abortions, sometimes referred to as “dismemberment abortions,” involve invasive actions that dilate the cervix and introduce instrumentation in order to remove fetal and

placental tissue from the uterus. Aspiration abortions are commonly carried out in the first trimester of pregnancy and use suction to remove the fetal tissue and placenta. D&Es are carried out in the second trimester and involve additional instrumentation necessary to grasp and remove parts of the fetus (e.g., limbs, torso, and calvarium) and the placenta from the womb through the cervix because the fetus is too large and its tissues too tough to be removed by suction alone. In both procedures the lining of the womb is then scraped with a suction curette to ensure all parts of the fetus and products of conception are removed.

14. Surgical abortion requires the use of Personal Protective Equipment (PPE) to protect the abortionist and their assistants from exposure to blood and other bodily fluids and tissue, and to protect the patient from infection. This would include the use of a surgical mask, eye protection, a gown, and gloves for the surgeon. Any assistants involved in the procedure would need a surgical mask, eye protection and gloves and possibly a gown depending on their involvement.

15. If there are complications, more staff and more PPE may be required as in the case of sudden profuse hemorrhage from failure of the uterus to properly contract (uterine hypotonia), Disseminated Intravascular Coagulation (DIC), laceration of the cervix, laceration of uterine or cervical arteries, incomplete abortion, or perforation of the uterus with possible injury to pelvic and/or abdominal organs. If bleeding cannot be controlled the patient would need to be transferred to a hospital for possible medical and/or surgical intervention. If perforation with injury to internal organs is suspected, laparoscopy or laparotomy would be warranted.[ii]

16. Due to the current threat of the COVID-19 virus, it is imperative that the patient also wear PPE (a surgical mask) to protect her and the medical staff. The exception would be if she is wearing an oxygen mask or is intubated.

17. Abortions are painful procedures. Although oral analgesics and a paracervical block performed by the abortionist may be adequate for some first-trimester aspiration abortions, some patients choose or require IV sedation or general anesthesia. D&E procedures are more painful than aspiration abortions, and more women choose or require IV sedation or general anesthesia. Deep IV sedation and general anesthesia require the services of an anesthetist[iii] which necessitates the use of even more PPE including a mask, eye protection, and gloves and may necessitate the use of an N95 mask if the patient is ventilated or intubated[iv]. Further, deep IV sedation and general anesthesia require the availability of a mechanical ventilator.[v] .

18. Surgical abortion requires a post op exam which would necessitate the use of a mask and gloves by the provider and a mask by the patient. The treatment of complications also requires additional PPE. Examples include but are not limited to D&C with suction to treat incomplete abortion, retained products of conception, infection or hemorrhage; or laparoscopy or laparotomy to treat perforation of the uterus and possibly repair injury to internal organs.[vi]

**I declare under penalty of perjury that the foregoing is true and correct.**

**Executed on April 15, 2020.**

Kathi Aultman, M.D.

[i] Vital Statistics - Induced Abortions May 31, 2019 p. 2. (2019, May 31). Retrieved from Arkansas Department of Health: https://www.healthy.arkansas.gov/images/uploads/pdf/2018_ITOP_Reports.pdf
[ii] Hern, W. M. (1990). Abortion Practice. Boulder, CO: Alpenglo Graphic, Inc. pp. 175-187, 194-204
[iii] Paul, M. (Ed.). (2009). Management of Unintended and Abnormal Pregnancy: Comprehensive Abortion Care. West Sussex, UK: Wiley-Blackwell, pp. 95-96.
[iv] *Rational use of personal protective equipment for coronavirus disease (COVID-19) and considerations during severe shortages - Interim guidance.* (2020, April 6). pp. 3-4. Retrieved from World Health Organization: https://apps.who.int/iris/bitstream/handle/10665/331695/
[v] Paul, M. (Ed.). (2009). Management of Unintended and Abnormal Pregnancy: Comprehensive Abortion Care. West Sussex, UK: Wiley-Blackwell, pp. 95-96.
[vi] Hern, W. M. (1990). Abortion Practice. Boulder, CO: Alpenglo Graphic, Inc. pp. 175-187, 194-204

**Curriculum Vitae of Kathi A. Aultman, M.D., FACOG**

Medical Practice

4/2014: Retired from medical practice and resigned from North Florida OB/Gyn LLC, Orange Park Division and resigned from Orange Park Medical Center & Orange Park Surgery Center due to disability

12/2013-3/2014: Went on Medical disability because of allergies

1/2013- 3/2014: North Florida OB/Gyn LLC, Orange Park Division (name change)

5/2005-12/2012: North Florida OB/Gyn Associates, Orange Park Division (Merger of Div I & Div II)

1996-4/2005: North Florida OB/Gyn Associates, Orange Park Division II

8/1985: Stopped Obstetrics

7/1981-8/1996: Kathi A Aultman, M.D., P.A.

Other Employment and Positions

2017 - Present: Associate Scholar with Charlotte Lozier Institute

2016 - 2020: Board of First Coast Shag Club, Director

2016 - 2018: Board of Trustees of Community Health Outreach

3/2016 – 4/2017: Quality Assurance Committee, Community Representative, Orange Park Surgery Center

3/2016 – 4/2017: Governing Board, Community Representative, Orange Park Surgery Center

2005-2014: Electronic Medical Records Committee, North Florida OB/Gyn Associates

2002-2005: Chairman, Quality Assurance Committee, North Florida OB/Gyn Associates

1/2002-1/2004 and ? -3/2016: Chairman, Governing Board, Orange Park Surgery Center

~1994-3/2016: Orange Park Surgery Center (Rotated almost continuously between positions on the Governing Board and the Medical Executive Committee)

2002-2007: Co-Founder and President, Clay County Graduate Chapter, Christian Medical and Dental Associations

6/2000-6/2002: Ethics Commission, Christian Medical and Dental Associations

1994-1996: Chairman, OB/GYN Department, Columbia Orange Park Medical Center, Orange Park, FL

1922-2014: Privileges at Orange Park Surgery Center

1987-1989: Medical Examiner, Clay County for sexual assault exams on children

Date?: Treasurer, Clay County Medical Society

1982-1983: Board of Directors, Children's Haven

1981-1983: Medical Director, Planned Parenthood of Northeast Florida, Inc.

1981-2014: Hospital Privileges at Orange Park Medical Center

1979-1981: Co-Founder and Co-director, Rape Treatment Center, University Hospital, Jacksonville, FL

1979-1981: Medical Examiner, Duval and Clay Counties for sexual assault exams

1978-1981: Gainesville Women's Health Center

1972-1973: Teacher, Bayley Ellard High School, Madison, NJ

Education, Training and Degrees

7/9-10/2019: Media and Testifying training, Charlotte Lozier Institute

2016: Media Training Course, Christian Medical and Dental Association, Bristol, TN

~2011: Certified in Robotic Laparoscopic Surgery

10/2002: Preceptorship in Minimally Invasive Surgery for the Female Patient, Florida Hospital

12/1990: Preceptorship, Laser Surgery in Gynecology, New Jersey Laser Institute

12/9/1983: Board Certification, Diplomat of the American Board of Obstetrics and Gynecology

8/1/1978 – 1/2018: Licensed to Practice Medicine and Surgery in the State of Florida

1977-1981: OB/Gyn Residency, University of Florida, Jacksonville Health Education Program, Jacksonville, FL

1974-1977: Doctor of Medicine, University of Florida College of Medicine, Gainesville, Florida

1973-1974: New Jersey College of Medicine and Dentistry, Piscataway, NJ

1968-1972: Bachelor of Arts, magna cum laude, Drew University, Madison, NJ

Awards

1/26/2019: Pro Life Utah, Guardian of Life Award

8/2004, 12/2006: Florida Medical Association, Distinguished Physician Certificate, "A Physician Who Cares"

2003: Florida Medical Association, Harold B. Strasser, M.D. Good Samaritan Award

1/2002: Clay County Medical Society, Award of Excellence

Organizations

Fellow, American College of Obstetrics and Gynecology

American College of Pro-Life Obstetricians and Gynecologists

Clay County Medical Society

Florida Medical Association

Christian Medical and Dental Associations

St Peter's Church

First Coast Shag Club

Florida Boppers, Inc

Jacksonville Junior Shaggers, Inc

Golden Isles Shag Club